

## CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this 10<sup>th</sup> day of Dec., 2012  
(Execution Date), by and between the City of Lincoln, Nebraska, a municipal corporation,  
hereinafter referred to as "City" and Ameritas Investment Corp., hereinafter referred to as  
"Consultant."

### RECITALS

#### A.

The City proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in the issuance of debt securities by the City ("Consultant Services").

#### B.

Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the City, and the City desires to engage Consultant for such Consultant Services on the terms herein provided.

#### C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree as follows:

#### I.

### ADMINISTRATOR OF AGREEMENT

Steve Hubka, of the City's Finance Department, shall be the City's representative for the purposes of administering this Agreement and shall have authority on behalf of the City to give approvals under this Agreement. Scott Keene, of the Consultant, will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

## **II.**

### **SCOPE OF SERVICES**

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Attachment A on behalf of the City. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

## **III.**

### **TERM OF AGREEMENT**

The term of this Agreement shall be for a period of four (4) years commencing upon execution of this Agreement by both parties, with an option to renew for an additional four (4) year term upon subsequent agreement of the parties, subject to the termination provisions as hereinafter provided.

## **IV.**

### **COMPENSATION**

The City agrees to pay Consultant for the services set forth in Attachment "A." Progress payments based upon a percentage of the Consultant Services performed as provided in Attachment "A" shall be payable monthly upon receipt of supporting documentation acceptable to the City for the work completed. All approved payments will be made to the Consultant.

Failure of the City to accept the recommendations or work of the Consultant on the basis of differences of professional opinion shall not be the basis for rejection of the work performed by the Consultant or for nonpayment of the Consultant.

## **V.**

### **SERVICES TO BE CONFIDENTIAL**

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the City, without the prior written approval

of the City or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

**VI.**  
**NON-RAIDING CLAUSE**

Consultant shall not engage the services of any person or persons presently in the employ of the City for work covered by this Agreement without the written consent of the City.

**VII.**  
**TERMINATION OF AGREEMENT**

A. This Agreement may be terminated by the Consultant if the City fails to adequately perform any material obligation required by this Agreement ("Default"). Termination rights under this paragraph may be exercised only if the City fails to cure a Default within ten (10) calendar days after receiving written notice from the Consultant specifying the nature of the Default.

B. The City may terminate this Agreement, in whole or part, for any reason for the City's own convenience upon at least ten days' written notice to the Consultant.

If the Agreement is terminated by either the City or Consultant as provided in A or B above, Consultant shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this paragraph in the event of termination.

Further, Consultant agrees that, upon termination as provided in this paragraph, it shall not be employed by any developer or other party who is or may be interested in the work effort as defined in Article II, or interested in the decisional process relating to the application of such findings as may result from the tasks performed as defined in Article II for a period of one (1) year after such termination, without prior approval of the City.

**VIII.**  
**ADDITIONAL SERVICES**

The City may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the City and Consultant shall be effective when incorporated in written amendments to this Agreement.

**IX.**  
**FAIR EMPLOYMENT**

*In connection with the performance of work under this Agreement, Consultant agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122, as amended.*

**X.**  
**FAIR LABOR STANDARDS**

The Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.

**XI.**  
**ASSIGNABILITY**

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the

prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Consultant from City under this Agreement maybe assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

## **XII. INTEREST OF CONSULTANT**

Consultant covenants that Consultant presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by Consultant under this Agreement.

## **XIII. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL**

Consultant agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without the express written consent of City.

City shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the City deems appropriate. The City shall also retain all such rights for any derivative works based on such works or materials.

**XIV.**  
**COPYRIGHTS, ROYALTIES & PATENTS**

Without exception, Consultant represents the consideration for this Agreement includes Consultant's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement. Further, Consultant shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Consultant shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights that Consultant has used in the course of performing this Agreement.

**XV.**  
**COPYRIGHT; CONSULTANT'S WARRANTY**

A. Consultant represents that all materials, processes, or other protected rights to be used in the Consultant Services have been duly licensed or authorized by the appropriate parties for such use.

B. Consultant agrees to furnish the City upon demand written documentation of such license or authorization. If unable to do so, Consultant agrees that the City may withhold a reasonable amount from Consultant's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

**XVI.**  
**INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its elected officials, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by Consultant or anyone directly or indirectly employed by Consultant

or anyone for whose acts any of the them may be liable. This section will not require Consultant to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

## XVII. INSURANCE

A. Insurance Coverage. At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Consultant and City from any and all claims under any Worker's Compensation Act or Employer's Liability Law. Consultant shall exonerate, indemnify and hold harmless City from and against, and shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

Coverage	Listing	Min. Amt	Notes
<b>Worker's Comp.</b>			
	State	Statutory	
	Applicable Federal	Statutory	
<b>Employer's Liability</b>			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

2. **Automobile Liability Insurance.** For all of the Consultant's automobiles, including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in an capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by a such Automobile Liability Insurance shall be as follows:

- I. Bodily Injury Limit - \$500,000 Each Person/\$1,000,000 Each Occurrence
- II. Property Damage Limit - \$500,000 Each Occurrence
- III. Combined Single Limit - \$1,000,000 Each Occurrence

3. **General Liability Insurance.** General Liability Insurance, naming and protecting Consultant and the City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Consultant and Consultant's employees, students, or those directly or indirectly employed by Consultant. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- i. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and



- ii. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- iii. Personal Injury Damage - \$1,000,000 each Occurrence; and
- iv. Contractual Liability - \$1,000,000 each Occurrence; and
- v. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
- vi. Medical Expenses (any one person) - \$10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. Professional Liability Insurance. Professional Liability Insurance, naming and protecting Consultant against claims for damages resulting from the Consultant's errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than two million dollars (\$2,000,000) per claim and aggregate.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an "occurrence" basis only, except for professional liability insurance which may be based upon a "claims-made" basis. All insurance coverages are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of not less than A:VIII unless specific approval has been granted by the City.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

D. Certificate of Insurance. All Certificates of Insurance shall be filed with the City of Lincoln on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by the preceding sections, and showing the City of Lincoln

is an additional insured for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance in place of a certificate of insurance for General Liability Insurance. The City shall be treated as an additional insured as if the Consultant possessed General Liability Insurance. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

#### **XVIII. NOTICE**

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

City of Lincoln Nebraska  
Finance Department  
Attention: Steve Hubka  
555 South 10th Street  
Lincoln NE 68508

Ameritas Investment Corp.  
Attention: Scott Keene  
5900 "O" Street, 1st Floor  
Lincoln, NE 68510

#### **XIX. INDEPENDENT CONTRACTOR**

The City is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor and it is expressly understood and agreed that Consultant is not an employee of the City and is not entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or and injury leave.

**XX.**

**NEBRASKA LAW**

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

**XXI.**

**INTEGRATION**

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

**XXII.**

**AMENDMENT**

This Agreement may be amended or modified only in writing signed by both the City and Consultant.

**XXIII.**

**SEVERABILITY**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**XXIV.**

**WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**XXV.**

**AUDIT AND REVIEW**

The Consultant shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

**XXVI.**

**LIVING WAGE**

If the compensation for services provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Consultant shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, the City shall have authority to terminate this Agreement and to seek other remedies for violations of this Ordinance.

**XXVII.**

**FEDERAL IMMIGRATION VERIFICATION**

A. If the Consultant is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Consultant shall not discriminate

against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Consultant shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/everify](http://www.uscis.gov/everify).

B. If the Consultant is an individual or sole proprietor, the Consultant agrees to complete the United States Citizenship Attestation Form as provided by the City and attach it to the Agreement.

C. Public Benefits Eligibility Status Check. If the Consultant is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached. The Consultant agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, the Consultant shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at the City's request. For information on the SAVE program, go to [www.uscis.gov/SAVE](http://www.uscis.gov/SAVE).

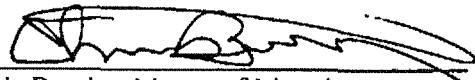
## **XXVIII.**

### **REPRESENTATIONS**

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, Consultant and the City do hereby execute this Agreement  
as of the Execution Date set forth above.

**CITY OF LINCOLN, NEBRASKA**

By:   
Chris Beutler, Mayor of Lincoln

**AMERITAS INVESTMENT CORP.**

By:   
Title: Vice President

**UNITED STATES CITIZENSHIP ATTESTATION FORM  
FOR INDIVIDUAL CONSULTANT  
(to be used pursuant to Section XXVII.B)**

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:



I am a citizen of the United States.

OR



I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

\_\_\_\_\_, and I agree to provide a copy of the USCIS (United States Citizenship and Immigration Services) documentation upon request required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States. I understand and agree that lawful presence in the United States is required and the consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

PRINT NAME: Scott Douglas Keene  
(First, Middle, Last)

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

11/30/12

**UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT**  
(to be used pursuant to Section XXVII.C)

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:



I am a citizen of the United States.

OR



I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

\_\_\_\_\_, and I  
agree to provide a copy of my USCIS (United States Citizenship and  
Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: Scott Douglas Keene  
(First, Middle, Last)

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

11/30/12



## City of Lincoln Contract Attachment A

### SCOPE OF SERVICES

The services which the City believes may be required includes, but may not be limited to, the following:

1. Assisting in the review of available and possible projected revenue sources.
2. The development of a debt management program, recommending the most appropriate source or combination of sources to pay for the capital programs.
3. Provide ongoing advice and consultation as to the status of the financial markets in general, any potential unique features which may be incorporated into any particular financing in order to enhance its marketability, and the timing and sale of any proposed financing.
4. Evaluation and selection of trustee services, underwriting and/or private placement services and the like.
5. *Attending meetings, if appropriate or advisable, with the financial rating services, i.e., Moody's Investors Services and Standard and Poor's, and undertaking all reasonable best efforts to assure the best possible ratings.*
6. Work with the City's bond counsel and financing team in recommending size, structure, specific terms and conditions of a debt issue.
  - 6.1 Present information regarding methods of sale, including publicly offered and privately negotiated options.
7. Assist in negotiations with bond insurers and/or letter of credit providers.
8. Manage competitive or negotiated sale process.
  - 8.1 Arrange for advertising and pre-marketing or issue.
  - 8.2 Represent the City at the bid opening for a public sale and analyze the bids, identify the most favorable bid, and make a recommendation as to award of the bid.
  - 8.3 Act as the City's agent if bid negotiations are required.
  - 8.4 After the bid is awarded, prepare an actual debt service table based on accepted coupon rates.

- 8.5 In the event of a negotiated offering, assist in negotiating appropriate terms, reviewing spreads, comparing deals, analyzing market levels, and clarifying syndicate roles with selected underwriter.
9. Continued services after the issuance of bonds such as monitoring the security provisions, conducting follow-up analysis of rate comparisons of bond sales, and providing on-going financial services through the completion of the construction period, or other relevant time-frame for projects financed with debt.
  10. Comparing and evaluating possible or potential methods of financing capital programs, which methods may include general obligation bonds, tax increment bonds, revenue bonds, special assessment bonds, lease-purchase agreements, tax anticipation notes and other appropriate alternatives.
  11. The development of in-depth knowledge about and understanding of the financial condition, operational procedures, and policies of the City and their relationships to funding sources and revenue streams, as well as relevant ordinances, charter amendments, laws, and state statutes.
  12. Analytical services including extensive computer modeling of cash-flow programs related to construction projects.
  13. Participation in community informational meetings and otherwise assist the City in explaining the capital program/s and financing to the electorate.
  14. Assisting in the preparation of appropriate preliminary and final offering circulars, official statements and private placement memorandums.
  15. Assist in training staff in the area of municipal bond financing and debt issuances.
  16. The Consultant may only act as underwriter of a City bond issue upon the written consent of the City's Finance Director. To comply with Municipal Securities Rulemaking Board (MSRB) Rules G-17 and G-23, the Consultant agrees that it will provide the required notifications to the City Finance Director at the earliest stages of any financing for which it will be acting as underwriter.

**City of Lincoln Contract Attachment B**

**City of Lincoln  
Fee Quote for Financial Consulting Services**

**Ameritas Investment Corp.**

**November 15, 2012**

- A. AIC's fee for conducting competitive sales will not exceed the following percentages:

<u>Portion of Financing Within the Range</u>	<u>Financial Consulting Fee as a \$ or % of Issue Size</u>
\$0 to \$2,500,000	\$5,000
\$2,500,001 to \$5,000,000	0.20%
\$5,000,001 to \$10,000,000	0.15%
\$10,000,001 to \$15,000,000	0.10%
\$15,000,001 to \$40,000,000	0.075%
\$40,000,001 and up	To be negotiated

- B. AIC requests the ability to negotiate mutually agreeable fees for special services not directly related to advising or managing a bond issue prior to the commencement or work on such a project.
- C. In the event that AIC acts as Senior Manager of a negotiated financing, AIC agrees to negotiate a mutually agreeable underwriter's discount with the City at the time of the financing.